1548.

SUPREME COURT OF THE UNITED STATES.

No. 126.

GEORGE C. DODGE, Appellant,

vs.

JOHN M. WOOLSEY.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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At a Circuit Court of the United States of America within and for the District of Ohio, begun and held at the city of Columbus on the third Tuesday in the month of October, that being the seventeenth day of that month, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States of America the seventy-ninth, before the Honorable John McLean, and the Honorable Humphrey H. Leavitt, Judges of said Court, among other the following proceedings were had, to wit:—

JOHN M. WOOLSEY
vs.
GEORGE C. DODGE, Treasurer, &c., and others. } In Chancery.

Injunction.

Be it remembered that heretofore, to wit: on the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-three, came the said complainant by his solicitor, and filed in the Clerk's Office of said Court his certain Bill in Chancery against the said respondents, which said bill is in the words and figures following, to wit:—

(*Bill.*)

To the Honorable the Judges of the Circuit Court of the United States within and for the District of Ohio, in Chancery sitting: John M. Woolsey, who is a citizen of the State of Connecticut, brings this his bill of complaint against George C. Dodge, of Cleveland, in the county of Cuyahoga and State of Ohio, and a citizen of the State of Ohio, Treasurer of the said county of Cuyahoga, the Commercial Bank of Cleveland, a corporation duly incorporated under an Act of the Legislature of the State of Ohio, located and carrying on a banking business at the city of Cleveland, in the District of Ohio aforesaid, Nathan C. Winslow, William A. Otis, Truman P. Handy, Abner C. Brownell, and Mathew J. Williamson, Directors of the said Commercial Bank of Cleveland, and all of said State of Ohio, and citizens of the same. And thereupon your orator respectfully complains, and says: that on the 24th day of February, A. D. 1845, the General Assembly of the said State of Ohio passed an Act entitled An Act to incorporate the State Bank of Ohio, and other banking companies, to be found in the 43d volume, p. 24, of the General Laws of Ohio, to which your orator refers, and prays that the same may be made a part of this bill; that said Commercial Bank of Cleveland is a duly organized Banking Company under said Act, and was formed on the 20th day of October, A. D. 1845, and that on the formation thereof on the said 20th day of October, A. D. 1845, it assumed to itself a capital stock of one hundred and

fifty thousand dollars, divided into shares of one hundred dollars each, and which in September, 1848, was increased to 175,000 dollars, and elected to carry on its business as a branch of the State Bank of Ohio, in the said city of Cleveland, county of Cuyahoga and State of Ohio. And your orator further represents that afterwards, on or about the first day of November, 1845, having fully complied in all respects with all and singular the requirements of said Act of February 24th, A. D. 1845, necessary to a complete organization, and the acquisition of complete powers under the same, said Commercial Bank of Cleveland became a body politic and corporate, having succession until the first day of May, A. D. 1866, for banking purposes, and was fully authorized and empowered to commence and carry on the business of banking at the said city of Cleveland, under the provisions of said Act, and did in fact afterwards, on the 24th day of November, A. D. 1845, commence the business of banking under said Act of February 24th, A. D. 1845, and has ever since that time carried on, and still does carry on the said business of banking under the same Act in the said city of Cleveland, and has at all times since its organization as such Banking Company fully complied with all the provisions of said Act of February 24, A. D. 1845, in carrying on such business, and still does fully comply therewith. And your orator further represents, that by the 49th section of said Act, it is provided that the affairs of every Company formed and organized to carry on the business of banking under the provisions of said Act shall be managed by not less than five nor more than nine directors, all of whom shall be citizens of the United States, and residents of the State of Ohio, and that said William A. Otis, Truman P. Handy, Nathan C. Winslow, Abner C. Brownell and Mathew J. Williamson are the Directors of said Commercial Bank, duly elected and qualified under the provisions of said 49th section, and are now managing the affairs and exercising the corporate powers of said Bank as such Directors, all of whom are citizens and residents of the State of Ohio, as herein before stated. And your orator further represents that in and by the 60th section of said act of February 24, A. D. 1845, it is provided and declared that each Banking Company organized under said act, or accepting thereof, and complying with its provisions, shall semi-annually, on the days designated in the 59th section of said act (to wit, on the first Monday in May and November of each year) for declaring dividends, set off to the said State of Ohio six per cent. on the profits, deducting therefrom the expenses and ascertained losses of said Company for the six months next preceding each dividend day, and that the sums or amount so set off shall be in lieu of all taxes to which such Company or the stockholders thereof on account of stock owned therein would otherwise be subject, and that the Cashier of such Company shall within ten days thereafter inform the Auditor of State of the said State of Ohio of the amount so set off, and shall pay the same to the Treasurer of

State of the said State of Ohio on the order of said Auditor of State therefor. And your orator further represents that the said Commercial Bank of Cleveland has, at all times since its organization, complied fully with the requisition of said 60th section, and has semi-annually, on the first Monday of May and November of each year, set off to the said State of Ohio, the sums required by said 60th section, and the Cashier thereof has informed the said Auditor of the State of Ohio, within ten days thereafter, of the amount so set off, and that on the first Monday of May, A. D. 1853, the said Commercial Bank did set off to the said State of Ohio the sum of one thousand four hundred and eighty-eight $\frac{13}{100}$ dollars, and that on the first Monday of November, A. D. 1853, did further set off to said State the sum of one thousand seven hundred eighteen dollars $\frac{52}{100}$ths, as required by said 60th section. And your orator avers that the sums so respectively set off as aforesaid was, and are, in fact six per cent. of the profits of said Commercial Bank during the half years then respectively expiring, the expenses and ascertained losses for said respective half years having been respectively deducted therefrom according to the provisions of said 60th section, and that the Cashier of said Bank did within ten days after the respective periods aforesaid, to wit: on the 1st day of May and the 1st day of November, A. D. 1853, inform the said Auditor of State of the said State of Ohio of the respective amounts so set off as aforesaid. And your orator further represents and says that said sums respectively so set off as aforesaid, have ever since stood, and now stand in the books of said Commercial Bank to the credit of the said State of Ohio, and that said Bank has always been willing, and is now ready and willing to pay said sums respectively so set off as aforesaid to the said Treasurer of the State of Ohio on the order of the Auditor of State therefor, as provided by said 60th section; but your orator has been informed, and believes the same to be true, that said Auditor of State has at all times hitherto, without any fault of said Bank, refused, and still does refuse, to order said Bank to pay said sums respectively to the said Treasurer of State, and that said Treasurer of State has at all times hitherto, and still does refuse, to receive the said sums, or any part thereof, from said Bank. And your orator further represents that the said State of Ohio, from the organization of said Commercial Bank until the close of the year A. D. 1850, at all times faithfully observed and respected, as she was in duty bound to do, the aforesaid provisions of said 60th section, received the respective amounts set off to said State by said Bank as aforesaid in lieu of all taxes to which said Bank or its stockholders on account of stock owned therein, would otherwise have been subject; that about three years ago, your orator having full confidence that the said State of Ohio would continue to act in good faith with said Commercial Bank in reference to the franchises and privileges conferred upon said Bank by the aforesaid act of February 24, A. D. 1845, and relying (as well he might)

upon said State respecting with fidelity the rule of taxation provided by said 60th section, purchased thirty shares of the capital stock of said Commercial Bank, and is now the owner of said thirty shares of the capital stock of said Bank, worth forty per cent. above par, or more, at this time. And your orator well hoped that he should from time to time receive the profits earned by his said stock, allowing taxes to be assessed thereon, agreeably to the rule of taxation provided in the 60th section of said Act of February 24, A. D. 1845, and not otherwise. But now, so it is, may it please your Honors, the General Assembly of the State of Ohio, on the 13th day of April, A. D. 1852, passed an act entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," to be found in volume 50, p. 135, of the General Laws of said State of Ohio, and which is made part of this Bill, wherein it is provided and declared (amongst other things) that it shall be the duty of the President and Cashier of every Bank or Banking Company that shall have been or may hereafter be incorporated by the laws of this State, and having the right to issue bills for circulation as money, to make out and return under oath to the Auditor of the county in which such Bank or Banking Company may be situated, in the month of May annually, a written statement containing, 1st. the average amount of notes and bills discounted or purchased by such Bank or Banking Company, which amount shall include all the loans or discounts of such Bank or Banking Company, whether originally made or renewed during the year aforesaid, or at any time previous, whether made on bills of exchange, notes, bonds, mortgages, or any other evidence of indebtedness (at their actual cash value in money), whether due previous to, during, or after the period aforesaid, and on which such Bank or Banking Company has at any time reserved, or received, or is entitled to receive, any profit or other consideration whatever, either in the shape of interest, discount, exchange, or otherwise; and 2d, the average amount of all other moneys, effects, or dues of every description belonging to such Bank or Banking Company loaned, invested, or otherwise used or employed with a view to profit or upon which such Bank or Banking Company receives, or is entitled to receive, interest. And your orator further represents that it is further provided and declared in said last mentioned act, that it shall be the duty of the Auditor of the several counties in which one or more Banking Companies may be situated, upon receiving returns of their notes and bills discounted, and all other *moneys* and effects or dues as provided in the 19th section of this Act, to enter the same for taxation upon the grand duplicate of the property of the county and upon the city duplicate for city taxes, in cases where such city tax is not returned upon the grand duplicate, but is collected by city officers; which amount so returned and entered, shall be taxed for the same purposes and to the same extent that personal property is now or may be taxed in the place where such Bank or Banking Company is situated. And your orator

further represents, that long after the organization of said Commercial Bank, and long after your orator became as aforesaid a stockholder therein, while said Bank was carrying on the business of banking as aforesaid, under said Act of February 24, A. D. 1845, to wit: on the 17th day of June, A. D. 1851, a draft of a Constitution for the State of Ohio (commonly called the new Constitution) was submitted to the electors of said State for their adoption, and on the same day the majority of the electors of said State, by ballot, adopted and approved of the same, to take effect and become the Constitution of said State of Ohio on the first day of September, A. D. 1851, and the same from the latter date hitherto has been, and still is, the Constitution of the said State of Ohio; that it is provided in sections second and third of Article 12th of said Constitution, that laws shall be passed taxing by a uniform rule all *moneys*, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and that the General Assembly shall provide by law for taxing the notes and bills discounted or purchased, money loaned, and all other property, effects, or dues of every description (without deduction) of all Banks now existing or hereafter created, and of all Bankers, so that all property employed in banking shall always bear a burden of taxation equal to that imposed on the property of individuals." And that in Section 4 of Article 13 of said Constitution it is provided further that the property of Corporations now existing, or hereafter created, shall be subject to taxation the same as the property of individuals. And your orator further represents and says that neither the directors, your orator, nor the other stockholders of said Commercial Branch Bank have ever at any time relinquished, surrendered, or waived in any manner, nor do they now relinquish, surrender, or waive any of the franchises or privileges conferred upon said Commercial Bank or its stockholders by the provisions of said act of February 24, A. D. 1845, nor have they ever at any time directly or indirectly assented to nor do they now assent to any repeal, amendment, or modification whatever of any of the provisions of said act of February 24, A. D. 1845. And your orator further represents that so much of the Act of April 13th, A. D. 1852, as imposes upon said Commercial Branch Bank any other, or greater, or different tax from that imposed by the 60th section of said Act of February 24, A. D. 1845, is inconsistent with the provisions of said 60th section; that your orator has been informed by counsel learned in the law, and so believes and charges, that said Act of February 24, A. D. 1845, under which said Commercial Bank was organized as aforesaid, is a contract (and especially said 60th section) between the said State of Ohio and the said Commercial Bank, binding as well upon said State as upon said Bank and its stockholders; and so much of said Act of April 13th, A. D. 1852, as is inconsistent with the provisions of said Act of February 24, A. D. 1845, and imposes upon said Bank another or greater tax than is provided and declared shall be paid by said Bank in said 60th section, is contrary and repugnant to the Constitution of the

United States, which declares in section 10, article 1st, that no State shall pass any law "impairing the obligation of contracts," because the same impairs the obligation of the contract created as aforesaid by the said Act of February 24, A. D. 1845, between the said State of Ohio and the said Commercial Bank and its stockholders, and is therefore void, and that any tax imposed upon or assessed against said Bank under or by virtue of said Act of April 13th, A. D. 1852, or under or by virtue of any other Act or law of the said State of Ohio which imposes another or greater tax than that required by the 60th section of said Act of February 24th, A. D. 1845, is illegal and utterly void. And your orator further represents and charges that the said Act of April 13th, A. D. 1852, so far as it is sought therein to be applied to said Commercial Bank and other Banking companies in the said State of Ohio, organized under said act of February 24, A. D. 1845, is also contrary and repugnant to the present Constitution of the said State of Ohio, which provides as aforesaid that the property of corporations existing when said Constitution took effect, and those thereafter created, should forever be subject to taxation the same as the property of individuals, and that the General Assembly of the State of Ohio should provide by law for taxing the notes and bills discounted or purchased, *moneys* loaned, and all other property and effects, or dues of every description (without deduction) of all Banks then existing or thereafter created, and of all Bankers, so that all property employed in Banking should always bear a burden of taxation equal to that imposed on the property of individuals, because said act provides in section 10 thereof, that in making up the amount of *moneys* and credits which any person is required to list for himself, or any other person, company, or corporation, he shall be entitled to deduct from the gross amount of *moneys* and credits the amount of all *bona fide* debts owing by such person, company, or corporation, received with a proviso, however, that nothing in said section should be so construed as to apply to any Bank, or company, or corporation exercising banking powers or privileges; which proviso denying to Banks the right in making up the amount of their *moneys* and credits for taxation to deduct therefrom *bona fide* debts owing by such banks to any person, or other company, or corporation, for a consideration received, your orator submits, is in direct conflict with the uniform rule of taxation provided for in said Constitution, and thus, for this cause also, said Act of April 13th, A. D. 1852, is void, and any tax imposed upon, or assessed against said Commercial Bank, in pursuance of the provisions of said last mentioned act, would be unconstitutional and utterly void. And your orator further represents, that, although as herein before stated, the directors, stockholders, and officers of said Commercial Branch Bank have at all times hitherto denied the validity of said Act of April 13th, A. D. 1852, and still do deny its legality, yet the President and Cashier thereof, in view of the penalty imposed by said act for the refusal or neglect to make the written statement therein

required, did in the month of May, A. D. 1852, make out the written statement required by such act, and return the same to the said Auditor of Cuyahoga County, but with a protest, however, against the validity of said act, a copy of which statement and protest is hereto attached, marked 'A,' and made part of this Bill; and the Auditor of the said County of Cuyahoga, claiming the right so to do, under the provisions of said act of April 13th, A. D. 1852, entered upon the duplicate of said County of Cuyahoga, for taxation against said Commercial Bank, the sum of 563,401 $\frac{59}{100}$ dollars, and computed and assessed thereon a tax against said Banks to the amount of ten thousand one hundred and ninety-seven dollars and fifty-five cents, a sum exceeding by seven thousand five hundred and twenty-six dollars and seventy-two cents, the amount of tax to which said Bank was liable under the provisions of said act of February 24, A. D. 1845; and upon the Directors and officers of said Bank refusing to pay the same, the said George C. Dodge, Treasurer as aforesaid of said Cuyahoga County, claiming to be empowered so to do by the provisions of an act of the General Assembly of said State of Ohio, entitled "An Act to enforce the collection of taxes which now are or may hereafter be due from Banks or other Corporations, from Bankers, Brokers and Stockjobbers, and from the Agents of foreign Corporations, and to protect County Treasurers and other officers charged with the collection of the public revenue in the performance of their duties," passed March 14, A. D. 1853, and to be found in volume 51, page 476, of the General Laws of Ohio, which is made part of this Bill, without the consent of the officers or Directors of said Bank, forcibly opened the vaults thereof, and distrained and carried away therefrom, in current Bank bills, the property of said Bank, to satisfy such illegal tax, and five per cent. penalty thereon, the sum of $11,220; all which actings and doings of said Treasurer your orator charges were contrary to equity and good conscience, and unlawful, and tended greatly to impair the exercise of the lawful franchises and privileges of said Bank, and to inflict an irreparable injury upon your orator and the other Stockholders of said Bank. And your orator further represents, that although, as herein before stated, the Directors, Stockholders and officers of said Commercial Branch Bank have at all times hitherto denied the validity of said act of April 13th, A. D. 1852, and still do deny its legality, yet the President and Cashier thereof, in view of the penalty imposed by said act for the neglect or refusal to make the written statement and return therein required, did in the month of May, A. D. 1853, make out the written statement required by such act, and return the same to the said Auditor of Cuyahoga County, but with a protest, however, against the validity of said act, a copy of which statement and protest is hereto attached, marked 'A,' and made part of this Bill, and that said Auditor, claiming the right under said act so to do, entered upon the duplicate of said Cuyahoga County for the present year against said Bank for taxation, the sum

of six hundred and seventy-one thousand four hundred and forty-nine dollars, and has computed and assessed upon said last mentioned sum against said Bank a tax to the amount of fourteen thousand seven hundred and seventy-one dollars eighty-seven cents, which amount of tax so wrongfully assessed by said Auditor now stands charged on said County duplicate against said Commercial Branch Bank. And your orator further represents and says, that the aforesaid tax so made up and assessed by the said Auditor of Cuyahoga County as aforesaid, and which now stands charged against said Bank in the duplicate of said County, is a wholly different tax from that imposed upon said Bank by the act of February 24, A. D. 1845; that the same is computed and assessed upon an entirely different basis, and in such a manner as to exceed by eleven thousand five hundred and sixty-five $\frac{22}{100}$ dollars, the amount of the tax imposed upon said Commercial Branch Bank by the 60th section of said act of February 24, A. D. 1845, under which said Bank was organized and alone liable to taxation. And your orator charges that the tax so assessed by said County Auditor is contrary and repugnant to the Constitution of the United States and of the State of Ohio, and that the same is grossly unjust, unlawful, and utterly void. And your orator further represents, that said George C. Dodge, Treasurer of the said county of Cuyahoga as aforesaid, and who is charged with the collection of said tax so illegally computed and assessed against said Commercial Bank, and which now stands charged upon said duplicate, insists that said tax shall be paid by said Commercial Branch Bank, and intends to demand said tax of said Commercial Branch Bank in pursuance of the provisions of said Act of the General Assembly of the State of Ohio, passed March 14th, A. D. 1853, and has distinctly threatened and is now threatening said bank, that if said unlawful tax is not voluntarily paid by said bank, he shall proceed to collect the same by distress and sale of the property and effects of said Commercial Branch Bank. And your orator further represents, that in his own behalf as a stockholder in said Commercial Branch Bank, he has made application to the aforesaid Directors of said Commercial Branch Bank, all of whom are residents and citizens as aforesaid of the said State of Ohio, requesting them to take measures, by suit or otherwise, to prevent the collection of said unlawful tax by said Treasurer, but said Directors refuse to take any action in the premises. And your orator avers, that as a stockholder of said Commercial Branch Bank, if said George C. Dodge shall do as he threatens to do (and as your orator verily believes he will do, unless prevented by this Honorable Court), and actually seize and remove, or distrain and sell the property and effects of said Commercial Branch Bank to an amount sufficient to satisfy said unlawful tax, he will sustain great and irreparable injury, for your orator says that he has been informed, and believes the same to be true, that said George C. Dodge has very little property, if any, subject to levy and sale on execution at law, and is not pecuni-

arily responsible to an amount equal to said tax, and thus, if said unlawful tax shall be allowed to come into the hands, or under the control of said George C. Dodge, or pass into the treasury of said Cuyahoga County, your orator can have no adequate remedy at law for the damages he will sustain as such stockholder thereby. And your orator further represents and charges, that the acts of said George C. Dodge in thus proceeding to compel the payment of said unlawful tax, if said Bank shall refuse to pay the same, and the collection of said tax, will not only interrupt for the time being the lawful exercise of the franchises and privileges of said Commercial Branch Bank, secured to it by the provisions of said act of February 24th, A. D. 1845, but will also have the direct tendency to greatly impair the value of such franchises and privileges, and will be a damage to your orator more than five hundred dollars, and greatly diminish the future profits which your orator's said capital stock would otherwise earn, thereby greatly lessen its value; and your orator verily believes and charges that the rate of taxation so assessed and to be assessed against said Commercial Branch Bank of Cleveland under said act of April 13th, A. D. 1852, is so onerous, that it will compel said Commercial Branch Bank to immediately cease its business and wind up its affairs, and so destroy the franchises and privileges of said Bank for the time yet to come, before the same will expire by the limitation provided in said act of February, A. D. 1845, to the great loss and damage of your orator and other stockholders; all which actings and doings are contrary to equity and good conscience. Now, therefore, your orator prays process of subpœna against the said George C. Dodge, the Commercial Branch Bank of Cleveland, and the said William A. Otis, Nathan C. Winslow, Truman P. Handy, Abner C. Brownell, and Mathew J. Williamson, that they may be made defendants to this Bill and answer the same, the said coporation under their corporate seal, and the other defendants aforesaid under their corporal oaths, that an injunction may be allowed by this Honorable Court, restraining the said George C. Dodge from seizing or removing, distraining or selling any of the profits or effects of said Commercial Branch Bank for the purpose of satisfying said unlawful tax or any part thereof, or in any manner executing his said threats to coerce payment of said tax or otherwise proceeding to collect the same or any part thereof; and that your orator may have such other and further relief in the premises as to your honors shall seem proper and agreeable to equity and good conscience.

JOHN M. WOOLSEY,

By S. J. ANDREWS, his *Solicitor.*

F. T. BACKUS,

of Counsel.

STATE OF OHIO,
Jefferson County, ss:

STEUBENVILLE, *Dec.* 20, 1853.

Sherlock J. Andrews, of Cuyahoga county, of lawful age, being duly sworn, deposes and says, that he is the agent and attorney of the said John M. Woolsey; that he is generally acquainted with the matters and things stated in the foregoing bill, and that the same are true in substance and in fact, as he verily believes.

S. J. ANDREWS.

Subscribed and sworn to this 20th day of December, A. D. 1853, before me,

H. H. LEAVITT,
Dist. Judge of the U. S. for the Dist. of Ohio.

(*Allowance of Injunction.*)

Upon which said bill the following allowance of writ of injunction is endorsed, to wit:—

The Clerk will issue a writ of injunction restaining the Treasurer of Cuyahoga county from the collection of the taxes assessed against the Commercial Bank of Cleveland, for the year 1853, as prayed for in the within bill, on bond being given, satisfactory to the Clerk, in the sum of twenty-five thousand dollars. This injunction to continue in force till the next term of the Circuit Court.

Dec. 20, 1853. H. H. LEAVITT,
Judge U. S. Dist. of Ohio.

Copies of certain statements and protests attached to said bill, and made part of the same, are in the words and figures following, to wit:—

Copy of , (1852.)

Statement and protest as made by Commercial Branch Bank, Cleveland, to the Auditor of Cuyahoga county, May 31, 1852:

1*st.* The average amount of notes and bills discounted and purchased by the Commercial Branch Bank of Cleveland, including all loans or discount, whether made or renewed during the year from May 1, 1851 to May 1, 1852, inclusive, was $492,044 70

2*d.* The average amount of all other moneys, effects, or dues of every description belonging to said Comm'l Br'h Bank, loaned, invested, or otherwise used or employed with a view to profit, or upon which said Bank received or was entitled to receive interest, was 71, 356 89

Total, $563, 401 59

Signed,

T. P. HANDY, *Cas'r.* WM. A. OTIS, *Pres't.*

STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, *May* 31, 1852.

Personally appeared, William A. Otis, President, and Truman P. Handy, Cashier of the Commercial Branch Bank of Cleveland, and made oath that the aforesaid statement is true and correct, according to their best knowledge and belief.

Witness my hand and seal.

[SEAL.] JNO. T. NEWTON,
Notary Public.

Copy.

Resolutions and protest as follows:—

Resolved, That in the opinion of the Directors of the Commercial Branch of the State Bank of Ohio, at Cleveland, that the act for the assessment and taxation of all property in this State, and for levying taxes thereon, according to its true value in money, passed April 13th, 1852, so far as it imposes a tax on this Bank, or banking company, or the listing or valuing of its property different from that required by its charter, without the consent of the corporators, is unconstitutional and void, and is also repugnant to the Constitution of Ohio, which declares that all laws shall be passed taxing by uniform rule all investments in stock or otherwise, and that property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals; and again, that the property of corporations now existing or hereafter created, shall be forever subject to taxation the same as the property of individuals, and therefore, creates no legal liability against this Bank, and that this branch will not, as at present advised, pay such additional tax unless compelled by law, and hereby enters its *protest* against its imposition and collection.

Resolved, That the Cashier attach a copy of these resolutions, signed by the President and Cashier of this Bank, to the return of this Bank, made under said law; also file a copy, so attested, with the Treasurer of this county, and transmit a like copy to the Auditor of State as an evidence of the dissent of this Bank from all the provisions of said law, and its determination to rely upon the Constitution and legal rights of this Bank under its charter.

Attest, T. P. HANDY,
Cashier.

1 copy sent and deliv'd Auditor of State; 1 copy deliv'd County Treasurer, as above, by T. P. H.

Copy of , (1853.)

Statement and protest made to the Auditor of Cuyahoga county, by the Commercial Branch Bank of Cleveland, May 25th, 1853.

STATE OF OHIO,
Jefferson County, ss:

STEUBENVILLE, *Dec.* 20, 1853.

Sherlock J. Andrews, of Cuyahoga county, of lawful age, being duly sworn, deposes and says, that he is the agent and attorney of the said John M. Woolsey; that he is generally acquainted with the matters and things stated in the foregoing bill, and that the same are true in substance and in fact, as he verily believes.

S. J. ANDREWS.

Subscribed and sworn to this 20th day of December, A. D. 1853, before me,

H. H. LEAVITT,
Dist. Judge of the U. S. for the Dist. of Ohio.

(*Allowance of Injunction.*)

Upon which said bill the following allowance of writ of injunction is endorsed, to wit:—

The Clerk will issue a writ of injunction restaining the Treasurer of Cuyahoga county from the collection of the taxes assessed against the Commercial Bank of Cleveland, for the year 1853, as prayed for in the within bill, on bond being given, satisfactory to the Clerk, in the sum of twenty-five thousand dollars. This injunction to continue in force till the next term of the Circuit Court.

Dec. 20, 1853. H. H. LEAVITT,
Judge U. S. Dist. of Ohio.

Copies of certain statements and protests attached to said bill, and made part of the same, are in the words and figures following, to wit:—

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1*st.* The average amount of notes and bills discounted and purchased by the Commercial Branch Bank of Cleveland, including all loans or discount, whether made or renewed during the year from May 1, 1851 to May 1, 1852, inclusive, was $492,044 70

2*d.* The average amount of all other moneys, effects, or dues of every description belonging to said Comm'l Br'h Bank, loaned, invested, or otherwise used or employed with a view to profit, or upon which said Bank received or was entitled to receive interest, was 71, 356 89

Total, $563, 401 59

Signed,

T. P. HANDY, *Cas'r.* WM. A. OTIS, *Pres't.*

STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, *May* 31, 1852.

Personally appeared, William A. Otis, President, and Truman P. Handy, Cashier of the Commercial Branch Bank of Cleveland, and made oath that the aforesaid statement is true and correct, according to their best knowledge and belief.

Witness my hand and seal.

[SEAL.] JNO. T. NEWTON,
Notary Public.

Copy.

Resolutions and protest as follows:—

Resolved, That in the opinion of the Directors of the Commercial Branch of the State Bank of Ohio, at Cleveland, that the act for the assessment and taxation of all property in this State, and for levying taxes thereon, according to its true value in money, passed April 13th, 1852, so far as it imposes a tax on this Bank, or banking company, or the listing or valuing of its property different from that required by its charter, without the consent of the corporators, is unconstitutional and void, and is also repugnant to the Constitution of Ohio, which declares that all laws shall be passed taxing by uniform rule all investments in stock or otherwise, and that property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals; and again, that the property of corporations now existing or hereafter created, shall be forever subject to taxation the same as the property of individuals, and therefore, creates no legal liability against this Bank, and that this branch will not, as at present advised, pay such additional tax unless compelled by law, and hereby enters its *protest* against its imposition and collection.

Resolved, That the Cashier attach a copy of these resolutions, signed by the President and Cashier of this Bank, to the return of this Bank, made under said law; also file a copy, so attested, with the Treasurer of this county, and transmit a like copy to the Auditor of State as an evidence of the dissent of this Bank from all the provisions of said law, and its determination to rely upon the Constitution and legal rights of this Bank under its charter.

Attest, T. P. HANDY,
Cashier.

1 copy sent and deliv'd Auditor of State; 1 copy deliv'd County Treasurer, as above, by T. P. H.

Copy of , (1853.)

Statement and protest made to the Auditor of Cuyahoga county, by the Commercial Branch Bank of Cleveland, May 25th, 1853.

1*st.* The average amount of notes and bills discounted and purchased by the Commercial Branch Bank of Cleveland, including all loans or discounts, whether made or renewed during the year from May 1st, 1852 to May 1st, 1853, was 582 735

2*nd.* The average amount of all other moneys, effects, or dues of every description belonging to said Commercial B. Bank, loaned, invested, or otherwise used or employed with a view to profit, or upon which said Bank received, or was entitled to receive interest, was 88 714

Total, $671 449

Signed, WM. A. OTIS, *Pres't.*
T. P. HANDY, *Cas.*

STATE OF OHIO,
Cuyahoga County, ss:

CLEVELAND, *May 25th*, 1853.

Personally appeared William A. Otis, President, and Truman P. Handy, Cashier of the Commercial Branch Bank, Cleveland, and made oath that the aforesaid statement is true and correct according to their best knowledge and belief.

Witness my hand and seal.

[SEAL.] JOHN T. NEWTON,
Notary Public.

Copy—Resolutions and Protest, as follows:

Resolved, That in the opinion of the Directors of the Commercial Branch of the State Bank of Ohio, at Cleveland, that the act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money, passed April 13, 1852, so far as it imposes a tax on this Bank, or Banking Company, or the testing or valuing of its property different from that required by its charter, without the consent of the corporators, is unconstitutional and void, and is also repugnant to the Constitution of Ohio, which declares that all laws shall be passed taxing by uniform rule all investment in stock or otherwise, and that property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals; and again, that the property of corporations now existing, or hereafter created, shall be forever subject to taxation the same as the property of individuals, and therefore creates no legal liability against this Bank, and that this Branch will not, as at present advised, pay such additional tax, unless compelled by law, and hereby enters its *protest* against its imposition and collection.

Resolved, That the Cashier attach a copy of these resolutions, signed by the President and Cashier of this Bank, to the return of

this Bank made under said law; also file a copy so attested with the Treasurer of this County, and transmit a like copy to the Auditor of State as an evidence of the dissent of this Bank from all the provisions of said law, and its determination to rely upon the Constitution, and legal rights of this Bank under its charter.

Attest, T. P. HANDY,
Cas.

Copies of above delivered Auditor of State and County Treasurer as above by T. P. H.

And also on the said 21st day of December, in the year of our Lord 1853, the said Complainant, by his solicitor, filed in the Clerk's Office of said Court a certain Injunction Bond, which said Bond is in the words and figures following, to wit:—

(*Injunction Bond.*)

Know all men by these presents, that we, John M. Woolsey, of New Haven, Connecticut, and Levi Benedict and Thomas M. Kelly, of Cuyahoga County, State of Ohio, are held and firmly bound unto George C. Dodge, Treasurer of Cuyahoga County, in the sum of twenty-five thousand dollars, to the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators: sealed with our seals, and dated this 20th day of December, A. D. 1853. The condition of the above obligation is such, that whereas John M. Woolsey, a citizen of the State of Connecticut, has obtained an allowance of an injunction in the Circuit Court of the United States for the District of Ohio, to enjoin the said George C. Dodge, Treasurer as aforesaid, from collecting a certain tax now standing on the duplicate of said Cuyahoga County, and assessed against the said Commercial Bank for the year 1853, amounting to the sum of fourteen thousand seven hundred seventy one dollars and eighty-seven cents ($\$14{,}771\frac{87}{100}$) until the matter thereof can be heard in equity. Now if the said John M. Woolsey shall pay all moneys and costs due or to become due from him, and all moneys and costs which shall be decreed against him, and also pay all damage which the said defendant to said Chancery suit shall sustain by reason of the allowance of said injunction, in case said injunction should be dissolved, then this obligation shall be void; otherwise in full force and virtue in law.

JNO. M. WOOLSEY, [SEAL.]
T. M. KELLEY, [SEAL.]
LEVI BENEDICT. [SEAL.]

Approved the 21st day of December, 1853.

WM. MINER,
Clerk.

And thereupon a certain writ of injunction, and also a certain subpœna in Chancery issued out of the Clerk's Office of said Court in this case, which said writ of injunction is as follows, to wit:—

(*Writ of Injunction.*)

THE UNITED STATES OF AMERICA,
District of Ohio, ss:

The President of the United States of America, to George C. Dodge, Treasurer of Cuyahoga County, Ohio, and to his counsellors, attorneys, solicitors, and agents, and to each and every of them, greeting:

Whereas, John M. Woolsey has filed on the Chancery side of the Circuit Court of the United States, Seventh Circuit, and District of Ohio, a bill against you, the said George C. Dodge, Treasurer of Cuyahoga County; the Commercial Bank of Cleveland, a corporation duly incorporated under an act of the Legislature of the State of Ohio, located and carrying on a banking business at the city of Cleveland, in the District of Ohio aforesaid, Nathan C. Winslow, William A. Otis, Truman P. Handy, Abner C. Brownell, and Mathew J. Williamson, directors of the said Commercial Bank of Cleveland, among other things praying for an injunction to restrain you, the said George C. Dodge, from seizing or removing, distraining or selling any of the property or effects of said Commercial Bank, for the purpose of satisfying or collecting the taxes assessed against the Commercial Bank of Cleveland for the year 1853, or any part thereof, and from the collection of the same in any manner whatever. We, having regard to the matters aforesaid, do hereby command and strictly enjoin you, the said George C. Dodge, Treasurer of Cuyahoga County, Ohio, your attorneys, solicitors, and agents, and each and every of them, from collecting from the said Commercial Bank of Cleveland the tax assessed against the said Commercial Bank of Cleveland for the year 1853, or any part thereof. All of which commands and injunctions you are required to observe and obey until the next term of our said Circuit Court, to be holden at the city of Columbus on the third Tuesday of April next. Hereof you are not to fail, under the full penalty of the law thence ensuing.

Witness the Honorable Roger B. Taney, Chief Justice of the
[SEAL.] United States, this 21st day of December, 1853, and of the Independence of the United States of America the 78th.

WM. MINER,
Clerk.

And which said subpœna in Chancery is as follows, to wit:—

(*Subpœna.*)

UNITED STATES OF AMERICA,
District of Ohio, ss:

To the Marshal of said District, greeting:

We command you to summon Geo. C. Dodge, Treasurer of Cuyahoga County, Ohio, the Commercial Bank of Cleveland, Nathan C. Winslow, William A. Otis, Truman P. Handy, Abner C. Brownell, and Matthew J. Williamson, citizens of and residents in the State of Ohio, if they be found in your bailiwick, to be and appear before the Judges of the Circuit Court of the United States for the District of Ohio aforesaid, at Columbus, on the third Tuesday in the month of April next, to answer a bill in Chancery, filed against them by John M. Woolsey, a citizen of and resident in the State of Connecticut, and of this writ make legal service and due return on the first Monday in the month of February next, and have then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 21st day of December, 1853, and in the [SEAL.] 78th year of the Independence of the United States of America.

Attest, WM. MINER,
Clerk.

Memoranda.

The defendants must enter their appearance in this suit in the Clerk's Office on or before the day to which this writ is made returnable, otherwise the bill may be taken *pro confesso.*

Attest, WM. MINER,
Clerk.

And afterwards, to wit: on the seventh day of January, in the year of our Lord 1854, the Marshal of said District returned said writ of injunction into the Clerk's Office aforesaid, with his proceedings endorsed thereon, as follows, to wit:—

(*Return of Injunction.*)

In obedience to the command of this writ, I have this day served the same upon the said George C. Dodge, Treasurer of Cuyahoga County, by delivering personally a true copy to him of this writ.

CLEVELAND, *Dec.* 22*d*, 1853.

J. W. FITCH,
U. S. Marshal for the District of Ohio.

And afterwards, to wit: on the 26th day of January, in the year of our Lord 1854, the Marshal aforesaid returned said subpœna in

Chancery into the Clerk's Office aforesaid, with his proceedings endorsed thereon as follows, to wit:—

(*Return of Subpœna.*)

We, and each of, do acknowledge service of a true copy of this writ upon us this 4th day of January, 1854, by J. W. Fitch, U. S. Marshal O. D.

T. P. HANDY,
A. C. BROWNELL,
M. J. WILLIAMSON,
W. A. OTIS,
N. C. WINSLOW.

Served upon George C. Dodge by personally leaving with him a true copy of this writ.

J. W. FITCH,
U. S. Marshal.

DISTRICT OF OHIO:

And afterwards, to wit: on the 21st day of March, in the year of our Lord 1854, came the said George C. Dodge by his solicitor and filed in the Clerk's Office aforesaid his certain demurrer to the bill of the said complainant, which said demurrer is in the words and figures following, to wit:—

(*Dem'r.*)

CIRCUIT COURT U. S.,
7th Circuit and District of Ohio:

JOHN M. WOOLSEY
vs.
GEORGE C. DODGE *et al.* } Bill in Chancery.

The demurrer of George C. Dodge, one of the defendants to the bill of complaint of John M. Woolsey, complainant. This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true in manner and form as the same are therein set forth and alleged, saith he is advised by his counsel that there is no matter or thing in the said bill contained good and sufficient in law to call this defendant in question in this Honorable Court for the same, but that there is good cause for demurrer thereunto, and therefore this defendant that the complainant's said bill, in case the allegations therein contained were true, which this defendant doth in no sort admit, contains not any matter of equity wherein this Court can ground any decree or give the complainant any relief or assistance as against him this defendant. Wherefore, and for divers other errors and imperfections in the said bill appearing, this defendant

doth demur in law thereunto, and humbly demands the judgment of this Honorable Court whether he shall be compelled to put in any further or other answer to the said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

R. P. SPALDING,
Solicitor for Geo. C. Dodge.

I do hereby certify that I am of counsel for the defendant, George C. Dodge, in this case, and that, in my opinion, said demurrer is well founded in point of law.

R. P. SPALDING.

March 20, 1854.

U. S. OF AMERICA,
State and District of Ohio, ss:

I, George C. Dodge, do, upon my oath, say that the foregoing demurrer is not interposed for delay.

G. C. DODGE.

Sworn to and subscribed before me the 21st March, 1854.

WM. MINER,
Clerk.

And afterwards, to wit: at the April Term of said Court, in the year of our Lord 1854, to wit, April 19th:

(*Injunction continued till further order.*)

On motion of complainant by his counsel, it is ordered that the injunction heretofore allowed in this case be continued until the further order of this Court; and thereupon this cause was continued.

And afterwards, at the October Term of said Court, in the year of our Lord 1854, to wit, October 17th:

(*Leave to withdraw Demurrer and file Answer.*)

On motion of the respondents by Mr. Spalding, their counsel, leave is given to withdraw the demurrer heretofore filed in this case and file their answer.

And thereupon, on the said 17th day of October, A.D. 1854, came the said George C. Dodge by his solicitor, and filed in said Court his answer to the bill of the said complainant, which said answer is in the words and figures following, to wit:—

(*Answer of Dodge.*)

CIRCUIT COURT OF THE UNITED STATES,
7th Circuit and District of Ohio:

JOHN M. WOOLSEY
vs.
GEORGE C. DODGE *et al.* } In Chancery.

The answer of George C. Dodge, one of the defendants to the bill of complaint of John M. Woolsey, complainant. This defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith that it is true, and he admits that on the 24th day of February, A. D. 1845, the General Assembly of the State of Ohio passed an Act entitled "An Act to incorporate the State Bank of Ohio and other banking companies," as set forth by complainant in his bill of complaint, and he further admits that the Commercial Bank of Cleveland is a duly organized company for banking purposes under said Act, formed on the 20th day of October, A. D. 1845, with a capital stock of one hundred and fifty thousand dollars, divided into shares of one hundred dollars each, and which said capital stock was increased in Sept., 1848, to one hundred and seventy-five thousand dollars, and that said corporation elected to carry on its business as a Branch of the State Bank of Ohio, in the city of Cleveland, in the county of Cuyahoga and State of Ohio. He further admits that said Commercial Bank was fully authorized and empowered to commence and carry on the business of banking in said city of Cleveland, under the provisions of said Act of the 24th February, 1845, and that said bank did in fact commence the business of banking under said Act on the 24th day of November, 1845, and has ever since that time carried on, and still does carry on said business of banking under said Act in said city of Cleveland, and has in all things well and truly complied with the provisions of said Act.

This defendant further admits that William A. Otis, Truman P. Handy, Nathan C. Winslow, Abner C. Brownell and Mathew J. Williamson are the Directors of said Commercial Bank, duly elected and qualified according to the 49th section of said Act. He further admits, that the provisions of the 60th section of said Act are substantially as set forth by complainant in his bill, and that said Commercial Bank has at all times expressed a willingness to comply with the same. This defendant has no personal knowledge that said several sums of money specified in said bill, were set apart for the use of the State on the first Mondays in May and November, 1853, by said Commercial Bank, but for all the purposes of this suit he is

disposed to admit, and does admit those averments in the bill to be true, and he admits, also, that the Auditor and Treasurer of State refused to receive the same as the full amount of the tax assessed against said Bank for the year 1853. This defendant further admits that from the first organization of said Bank until the close of the year 1850, the State of Ohio received from said Bank six per cent. upon the dividends in lieu of other taxes, according to the provisions of said 60th section; and he also admits that the complainant is the owner of thirty shares of the capital stock of said Bank, but he cannot admit that said stock is worth 40 per cent. above par, and calls for proof of that averment. This defendant, in further answering says, it is true as stated in said bill, that the General Assembly of the State of Ohio, on the 13th of April, 1852, passed an act entitled "An Act for the assessment and taxation of all property in this State, and for levying taxes thereon, according to its true value in money, the provisions of said act, so far as the same have a bearing upon said Bank, being correctly set forth in said bill. This defendant further admits, that on the 17th day of June, 1851, a new Constitution was adopted by the votes of the people of the State of Ohio, to take effect on the first day of September, A. D. 1851, and that the same hath ever since remained, and now is in full force as the Constitution of said State of Ohio, and that said Constitution contains, among other things, the provisions set forth in said bill of complaint. This defendant admits, that neither the complainant nor the Directors and Stockholders of said Bank, nor any of them, have at any time relinquished, surrendered, or waived any of the franchises or privileges conferred upon said Bank by the Act of Feb. 24th, 1845, nor have they assented to any modification of said Act. This defendant, in further answering, admits that the Act of April 13th, 1852, so far as the same imposes an additional tax upon said Bank, is not consistent with the 60th section of the said Act of Feb. 24th, A. D. 1845, but this defendant denies that said first mentioned act is at all repugnant to the Constitution of the United States, or that said tax imposed by the terms of said law is illegal and void. On the contrary, this defendant will insist that the provisions of the enactment of April 13th, 1852, so far as they regard the taxation of banks, are in exact conformity with the requirements of the Constitution of the State of Ohio, which took effect September 1st, 1851, and in perfect harmony with the Constitution of the United States. This defendant, in further answering says, it is not true that said Act of April 13, 1852, is in conflict with the said Constitution of the State of Ohio, as claimed in said bill, but insists that the same is in exact conformity to said Constitution in all its substantial provisions. This defendant Admits that when the officers of said Commercial Bank made to the Auditor of Cuyahoga County the written statement required by the terms of said Act of April 13, 1852, they made the same under protest, as stated in said bill. He further admits, that under the operation of said Act

said Auditor entered upon the duplicate of said county for taxation against said Commercial Bank the sum of $\$563{,}401\frac{59}{100}$, and computed and assessed thereon a tax against said Bank to the amount of ten thousand one hundred and ninety-seven dollars and fifty-five cents for the year 1852, and that upon the refusal of the officers of said Bank to pay the same, this defendant, as Treasurer of said County of Cuyahoga, distrained and carried away from said Bank in current bank bills, the property of said Bank, the sum of $11,220, being the tax and penalty aforesaid, and poundage allowed by law. But this defendant says, it is not true that he forcibly opened the vault of said Bank, without the consent of the officers thereof. On the contrary, he declares that he entered said Bank and took said bills under an arrangement previously entered into, that the distress should thus be made quietly and without disturbance; and the packages of bills were in fact prepared and placed within his reach by the officers of said Bank, who afterwards and while said bank bills were in the keeping of this defendant as such Treasurer, assigned the same to one John G. Deshler, of Buffalo, N. Y., who immediately replevied them from defendant. This defendant further admits that in the month of May, 1853, the officers of said Commercial Bank made their written statement and return to the Auditor of said County of Cuyahoga, with a similar protest against the validity of said Act, and that said Auditor entered upon the duplicate for taxation against said Bank, the sum of $671,449, and assessed a tax thereon for the year 1853, of $\$14{,}771\frac{87}{100}$. This defendant admits that said last mentioned tax exceeds in amount the tax contemplated by said Act of 1845, but denies that the same is repugnant to the Constitution of the State of Ohio or of the United States. This defendant says, it is true that it became his duty as Treasurer of Cuyahoga County, having in his hands the tax duplicate for said county for the year 1853, properly certified by the County Auditor, to collect said tax so assessed against said Commercial Bank, and this defendant would have proceeded, in obedience to the laws of the State, to collect said tax, penalty, &c., by distress and sale of property, if he had not been enjoined by this Honorable Court. This defendant, in further answering the complainant's bill, says it is not true, and he denies that the complainant as one of the stockholders of the Commercial Bank has at any time made application to the Directors of said Bank to take measures, by suit or otherwise, to prevent the collection of said tax by this defendant, which measures said Directors refused to take. On the contrary, this defendant avers, that such allegation is wholly without foundation in truth, and is inserted merely for the purpose of "giving color" to the exertion of Chancery powers by this Honorable Court in this particular case. This defendant says, it is not true, and he denies that the complainant would have sustained an irreparable injury even though this defendant, as such Treasurer as aforesaid, had proceeded to seize, distrain, and remove the property and effects of said Commercial Bank to an amount sufficient to satisfy said tax penalty, &c.

for the reason that (admitting the tax to be invalid) the said Commercial Bank would have had full, ample, and adequate remedy at law against this defendant for any and all damages sustained by said corporation in consequence of said distress. This defendant says, in further answering said bill, that the averment therein contained in respect to the responsibility of this defendant, is wholly unwarranted by the facts, to wit: "that said George C. Dodge has very little property, if any, subject to levy and sale on execution at law, and is not pecuniarily responsible to an amount equal to said tax." This defendant says, the truth is that he now owns unincumbered real estate, situate in the city of Cleveland, in said county of Cuyahoga, worth at a fair valuation more than twenty-five thousand dollars, and that he is at this time worth, at a reasonable calculation, more than eighty thousand dollars after the payment of all his debts. This defendant says further, that he, this defendant, together with his bondsmen, were worth at the time said bill was filed, more than three hundred thousand dollars over and above the pay't of their debts. This defendant says, that he is not informed in regard to the probable effect upon the profits and franchises of said Bank, that would result from the collection of said tax, but believes the natural tendency would be in some degree to diminish the profits. This defendant, in conclusion, insists that the complainant has not exhibited to this Honorable Court such a case as entitles him to the interposition of a Court of Chancery, and he prays the same benefit through an exception taken in this his answer, as if he had formally demurred to said Bill. And now, having fully answered, he prays to be hence dismissed, with his reasonable costs, &c.

R. P. SPALDING,
Solicitor for Geo. C. Dodge, Def't.

STATE OF OHIO,
Cuyahoga County:

CLEVELAND, *Oct.* 11*th*, 1854.

George C. Dodge, of Cleveland, being duly sworn, deposes and says that he has read the foregoing answer, and that the same is true in substance and in fact, as he verily believes.

G. C. DODGE.

Subscribed and sworn to before me this 11th day of October, 1854.

R. C. PARSONS,
U. S. Commissioner for the District of Ohio.

And afterwards, at the same term of said Court, to wit: October 18, A. D. 1854, came the said George C. Dodge by his solicitor, and filed in said Court his certain motion to dissolve the injunction heretofore allowed in this case, which said motion is in the words and figures following, to wit:—

(*Motion to Dissolve Injunction.*)

UNITED STATES OF AMERICA,
Seventh Circuit and District of Ohio:

U. S. Circuit Court, October Term, 1854.

JOHN M. WOOLSEY
vs.
GEORGE C. DODGE *et al.* } In Chancery.

Motion to Dissolve Injunction.

And now comes the said George C. Dodge, by R. P. Spalding, his solicitor, and moves the Court to dissolve the injunction heretofore allowed in this case, for the following reasons, to wit:—

1*st.* The complainant cannot sustain a suit in equity against the defendant, George C. Dodge, for, in the event of his making distress for the tax in said Bill mentioned, the complainant will have "plain, adequate, and complete remedy at law."

2*d.* The complainant, as one of the stockholders of said Commercial Branch Bank, has no right to call the Directors of said Bank to account in a Court of Equity for an error of judgment in respect to any matter confided to their discretion.

3*d.* There is no allegation in the bill that the Bank, or its Directors refuse by collusion with this defendant, or with other persons, to prosecute a suit, or to take other measures to prevent the collection of said tax.

4*th.* The complainant, in the character of a stockholder, has no right to call the Bank to account in a Court of Equity, for a breach of trust, as the relation of trustee and *cestui que* trust does not exist between the corporation and its several stockholders.

5*th.* The said Commercial Branch Bank is the creature of the laws of Ohio, and has no corporate existence in any other State. In the law such corporation is always regarded in the light of a citizen and inhabitant of the State which creates and sustains it. The Commercial Branch Bank can have no right to institute a suit in the Federal Court against George C. Dodge, also a citizen and inhabitant of Ohio.

6*th.* A stockholder of the Commercial Branch Bank is one of the component parts of the corporation. He has no distinct individuality, so far as it respects the interests of the Bank, that will enable him to sue a citizen of Ohio in the Federal Court, although he may be the citizen and inhabitant of the State of Connecticut.

7*th.* The complainant in his Bill does not show himself entitled to the interposition of this Honorable Court, sitting as a Court of Equity.

8*th.* The tax law of April 13th, 1852, is a valid constitutional enactment by the General Assembly of the State of Ohio.

9*th.* It is contrary to sound public policy that the collection of the

State revenue should be arrested by the instrumentality of a writ of injunction.

R. P. SPALDING,
Solicitor for Def't, George C. Dodge.

And afterwards, at the same term of said Court, to wit: October, 26th, A. D. 1854, came the said complainant, by his solicitor, and filed in said Court his replication to the answer of the said George C. Dodge, which said replication is in the words and figures following, to wit:—

(*Replication.*)

CIRCUIT COURT OF THE UNITED STATES,
District of Ohio:

Replication of John M. Woolsey, Complainant, to the Answer of George C. Dodge, Defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith: That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be ready to aver and prove, as this Honorable Court shall direct, and prays as in and by his said bill he hath already prayed.

S. J. ANDREWS,
Solicitor.

And now on this day, to wit: October 28th, in the year and at the term of said Court first herein mentioned, came the parties by their counsel, and argued the motion heretofore filed in this cause by the defendant, George C. Dodge, asking that the injunction herein before allowed be dissolved; which said motion was by the Court overruled.

(*Decree.*)

Whereupon, by consent of the parties, this cause came on to be heard upon the bill, answer, replication, exhibits, and testimony, and was fully argued by counsel, and, the Court being fully advised in the premises, do upon consideration thereof find that the equity of the case is with the complainant, and it is hereby ordered, adjudged, and decreed that the injunction herein before allowed, stand and be perpetual, and the said George C. Dodge, Treasurer of the county

of Cuyahoga, State of Ohio aforesaid, and every deputy, agent, employee or other person charged with the collection of such tax, whether acting as Treasurer of said county or otherwise, is hereby perpetually enjoined and restrained from seizing, removing, distraining or selling any of the profits or effects of said Commercial Bank, defendant in this suit, for the purpose of satisfying the tax or any part of the tax set forth in the bill of complaint, and assessed for the year 1853, against said Bank, under an Act of the General Assembly of the State of Ohio, passed April 13th, 1852, and also from in any manner executing the threats of the said Dodge, to coerce payment of said tax, and from otherwise in any way proceeding to collect the said tax or any part thereof; but this injunction shall not be held to restrain the collection of such tax as said Bank is required to set off to the State of Ohio, under the Act of the General Assembly, passed February 24, 1845, if the said Bank shall fail or refuse to set off the same as required by the Act aforesaid. And it is further ordered that the said respondent, George C. Dodge, pay the costs of this suit, taxed to $87 94, within thirty days from the rising of this Court, or in default thereof that execution issue therefor as on judgments at law.

And thereupon, on motion of Mr. Spalding, of counsel for defendant, George C. Dodge, an appeal is allowed in this case to the Supreme Court of the United States, bond to be taken in the sum of five hundred dollars, and Henry H. Dodge, of Cleveland, Ohio, is approved by the Court as surety for the appellant. And afterwards, to wit: on the 22d day of November, in the year of our Lord 1854, came the said defendant, George C. Dodge, and filed in the Clerk's Office of said Court a certain appeal bond in this case, which said bond is in the words and figures following, to wit:—

(*Appeal Bond.*)

Know all men by these presents, that we, George C. Dodge and Henry H. Dodge, both of Cleveland, Ohio, are held and firmly bound unto John M. Woolsey in the sum of five hundred dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, sealed with our seals, and dated this 20th day of November, A. D. 1854. The condition of this obligation is such, that whereas George C. Dodge has taken an appeal from a certain decree rendered in favor of the said John M. Woolsey in the Circuit Court of the United States within and for the Seventh Circuit and District of Ohio, in a suit wherein John M. Woolsey was complainant, and George C. Dodge, Treasurer of Cuyahoga County, Ohio, The Commercial Bank of Cleveland, Nathan C. Winslow, William A. Otis, Truman P. Handy, Abner C. Brownell and Mathew J. Williamson were respondents, at the October Term thereof, A. D. 1854, to the Supreme Court of the United States: Now if the said George

C. Dodge shall pay the full amount of the condemnation money in said Supreme Court, and costs in case a decree shall be entered therein in favor of the appellee, then this obligation to be void, otherwise in full force and virtue in law.

G. C. DODGE. [SEAL.]
HENRY H. DODGE. [SEAL.]

Witness, R. C. PARSONS.

THE UNITED STATES OF AMERICA,
District of Ohio, ss:

I, William Miner, Clerk of the Circuit Court of the United States for the District of Ohio, do hereby certify that the foregoing is a true copy of the record of a certain cause determined in said Court, at the October Term, A. D. 1854, wherein John M. Woolsey was complainant, and George C. Dodge, Treasurer, and others were defendants, as the same appears among the records of said Court in my office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Circuit Court, at the City of Columbus, this 25th day of November, A. D. 1854, and in the 79th year of the Independence of the United States of America.

[SEAL.] WM. MINER,
Clerk.

Clerk's fees for transcript, &c., $13 45.

Filed Dec. 13, 1854.